



CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE 11/22/05

AGENDA ITEM 3

WORK SESSION ITEM _____

TO: Mayor and City Council

FROM: City Manager

SUBJECT: Stonebrae Country Club Project - Approval of Partial Assignment and Assumption Agreements from Stonebrae, L.P., to Standard Pacific, Toll Brothers and Warmington Group of Companies and Release and Partial Termination of Annexation Agreements

RECOMMENDATION:

It is recommended that the City Council adopt the attached resolutions approving the Partial Assignment and Assumption Agreements for the Stonebrae Country Club project from Stonebrae, L.P. to Standard Pacific, Toll Brothers and Warmington Group of Companies and the release and partial termination of the annexation agreements.

DISCUSSION:

The City Council approved the Development Agreement for the Blue Rock Country Club project (now "Stonebrae Country Club") with developer, Hayward 1900, Inc., in April 1998 and the assignment of the Development Agreement to Stonebrae, L.P. in June 2005. The Development Agreement provides that Stonebrae must obtain the consent of the City prior to any further assignment of its rights and obligations under the agreement. Stonebrae, L.P., is requesting that the Council approve a partial assignment and assumption of the Development Agreement by Standard Pacific Homes, Toll Brothers, Inc., and the Warmington Group of Companies, who are the proposed builders of Village A. As is common with projects of this magnitude, Stonebrae is requesting that the City consent to the assignment of the Development Agreement from Stonebrae to the three builders for the purpose of obtaining the requisite financing for the construction of Village A. The assignment specifically provides that Stonebrae, L.P., is not being released from its obligations under the Development Agreement. The assignment also specifically provides that the builders must comply with the adopted Design Guidelines. A letter from Paul Yuen, Chief Financial Officer of YCS, Nevada, Inc. (the managing partner of Stonebrae, L.P.) requesting the assignment is attached as Exhibit A.

In addition, Stonebrae, L.P., is requesting the release and partial termination of two annexation agreements entered into by the City and Stonebrae's predecessors in interest. Both agreements, the Easthills Annex No. 1 Annexation Agreement and the Hayward Boulevard Annex No. 2 Annexation Agreement, entered into in 1967 and 1982, respectively, set forth the obligations of the parties relative the property proposed to be annexed, some of which is now part of the Stonebrae Country Club project. Both agreements were superseded by the Blue Rock Country Club Project Development Agreement entered into 1998. To satisfy the requirements of the title company and remove any ambiguity with respect to its right to develop the property, Stonebrae

company and remove any ambiguity with respect to its right to develop the property, Stonebrae is requesting that the City acknowledge that, to the extent that the annexation agreements apply to the Stonebrae property, their provisions have been superseded by the Development Agreement. A letter from Paul Yuen requesting the release is attached as Exhibit B.

Given that Stonebrae, L.P., will remain fully obligated under the Development Agreement and that the annexation agreements have been superseded by the Development Agreement, staff recommends that the City Council approve the partial assignment of the Development Agreement to the three proposed builders of Village A and the release and partial termination of the annexation agreements.



Jesús Armas, City Manager

Attachments: Exhibit A: Letter from Paul Yuen with Partial Assignment and Assumption Agreement enclosed

Exhibit B: Letter from Paul Yuen with Release and Partial Termination of Annexation Agreements enclosed

Draft Resolutions



STONEBRAE

November 16, 2005

Mr. Jesus Armas
City Manager
City of Hayward
777 B Street
Hayward, CA 94541-4214

Re: StoneBrae Residential and Golf Community

Dear Jesus:

Stonebrae L.P. hereby formally requests the City of Hayward's consent to the partial assignment and assumption of the owner's rights and obligations under the Development Agreement between Stonebrae L.P. and the City of Hayward to the first three merchant homebuilders in the Stonebrae Country Club project. These builders are Toll Brothers, Inc., Warmintgon Homes California, and Standard Pacific Corporation. Enclosed is the form of Partial Assignment and Assumption Agreement that we are asking the City to approve.

The proposed partial assignment and assumption is contemplated in the Development Agreement and is a necessary pre-requisite to allow Stonebrae L.P. to complete the sale of its first phase of finished lots to each homebuilder. The partial assignment and assumption will ensure that each builder is subject to those portions of the Development Agreement that apply to their homebuilding activity and will also provide each builder with the vested development rights provided by the Development Agreement. The assignment and assumption agreement, however, will not release Stonebrae L.P. from its obligations under the Development Agreement. As the master developer, Stonebrae L.P. will continue to be fully bound by all terms of the Development Agreement and continues to be responsible for its implementation.

All three initial merchant builders are among the nation's top 100 home builders. Each is a leader in the luxury homebuilding industry and is fully prepared and capable to assume the applicable Development Agreement obligations.

- **Toll Brothers:** Toll Brothers is the leading luxury home builder in the United States and one of the twenty largest home builders in the nation. It has a substantial presence in the San Francisco Bay Area with nearly twenty on-going projects.
- **Warmington Homes:** Warmington Homes has been a California developer of luxury homes for over eight decades. Approximately 30,000 families now live in Warmington homes.

Mr. Jesus Armas
November 16, 2005
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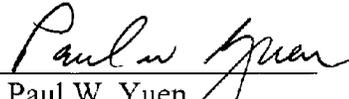
- **Standard Pacific:** Standard Pacific was founded in California in 1961 and has grown to become the nation's 11th largest homebuilder in terms of sales. Standard Pacific is already active in the City of Hayward as the developer of The Bay at Eden Shores and The Breakers at Eden Shores.

We appreciate very much your and the Council's consideration of our request. I would be more than happy to answer any further questions you or any of the council members may have.

Very truly yours,

STONEBRAE L.P.,

By: YCS Nevada, Incorporated,

By: 
Paul W. Yuen
Chief Financial Officer

Enclosure

RECORDING REQUESTED BY

Old Republic Title Company

AND WHEN RECORDED MAIL TO:

Attn: _____

THIS SPACE ABOVE FOR RECORDER'S USE

**PARTIAL ASSIGNMENT AND ASSUMPTION AGREEMENT
(Stonebrae to _____)**

THIS PARTIAL ASSIGNMENT AND ASSUMPTION AGREEMENT (the "Assignment") is entered into as of _____, 2005, between STONEBRAE L.P., a Delaware limited partnership ("Assignor"), and _____, a _____ ("Assignee").

RECITALS

A. Assignor is owner and master developer of the Stonebrae master planned residential community located within the City of Hayward (the "City"), County of Alameda (the "County"), State of California (the "Stonebrae Project"). The Stonebrae Project was originally known as the Blue Rock Country Club project.

B. Hayward 1900, Inc., Assignor's predecessor-in-interest ("Hayward 1900"), and City entered into that certain Blue Rock Country Club Project Development Agreement dated as of April 8, 1998, and recorded on April 18, 1998, as Document No. 98128317 in the Official Records of the Recorder's Office of the County, which was subject to those certain conditions of approval attached to the Blue Rock Country Club Project Development Agreement as Exhibit D, as such conditions of approval were amended in September of 2002 (collectively, together with the conditions of approval as amended, the "Development Agreement").

C. Development of the Stonebrae Project is also subject to those certain Stonebrae Design Guidelines (November 2005), which were adopted by the City Council of Hayward (the "City Council") on November 22, 2005, by resolution No. _____ (the "Design Guidelines").

D. As set forth in that certain Purchase and Sale Agreement and Joint Escrow Instructions between Assignor and Assignee, dated as of _____, 2005 (the "Purchase Contract"), Assignee has agreed to purchase certain finished lots within Village A of the Stonebrae Project, more particularly described on Exhibit A hereto (the "Property"). The balance of the Stonebrae Project, exclusive of the Property, is referred to herein as the "Retained Property."

E. As conditions to the transfer of the Property to Assignee, the Purchase Contract requires, among other things: (i) that Assignor assign to Assignee, to the extent the Development Agreement relates to the Property, certain rights and obligations of Owner under the Development Agreement; and (ii) that the City Council consent to this Assignment.

F. Accordingly, Assignor and Assignee desire that Assignor shall assign to Assignee all of Assignor's right, title and interest as Owner, and Assignee shall assume all of the Owner's obligations under the Development Agreement to the extent that the Development Agreement relates to the Property. The rights and obligations being assigned by this Assignment are more specifically described below.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignee and Assignor agree as follows:

1. Recitals. The Recitals set forth above are true and correct and are incorporated herein by this reference.
2. Assignment of Rights. To the extent the Development Agreement relates to the Property, Assignor hereby assigns to Assignee, and Assignee hereby accepts from Assignor, all of Assignor's right, title and interest as "Owner" under the Development Agreement.
3. Assumption of Obligations. To the extent the Development Agreement relates to the Property, Assignee hereby assumes, agrees to comply with, be bound by, and to timely fulfill the terms, covenants, conditions, and obligations of Assignor as "Owner" under the Development Agreement, which obligations are more specifically identified on Exhibit B hereto. In addition, to the extent the Design Guidelines relate to the Property, Assignee hereby agrees to comply with and be bound by the terms, conditions and obligations thereunder.
4. Limited Scope. This Assignment, among other things, transfers rights and obligations of the Development Agreement as it relates to the Property. In no event shall this Assignment be deemed to transfer any rights and/or obligations under the Development Agreement as it relates to the Retained Property. In addition, notwithstanding anything else contained herein to the contrary, this Assignment shall not release, in whole or in part, Stonebrae from its obligations as "Owner" under the Development Agreement.
5. Remedies Upon Assignee's Default of Development Agreement Obligations. Any action or inaction of Assignee, or those under Assignee's control, which constitutes a default under the Development Agreement which impairs development of the Retained Property or impairs the rights or obligations of Assignor under the Development Agreement, where such action or inaction is not cured within the relevant time periods set forth below, shall constitute a default under this Assignment (each, an "Assignee Default"). In the event of an Assignee Default, Assignor shall have the right, but not the obligation, to arrange for the cure of such Assignee Default by providing the involved or necessary parties any commercially reasonable incentives seen fit. Assignee shall cooperate with Assignor to effect the purposes of this self-help right. Within thirty (30) days of Assignee's receipt of an itemized request for reimbursement from

Assignor for the costs of curing an Assignee Default, and documentation reasonably substantiating the same, Assignee shall reimburse Assignor for such costs. Assignee shall not be in default for any obligation to pay money unless the default continues uncured for a period of three (3) business days after receipt of notice from Assignor. Assignee shall not be in default of any other obligations unless the default continues for a period of ten (10) days after receipt of written notice (the "Assignee Default Notice") from Assignor; provided, however, that if such failure is of such a nature that it cannot be cured within such ten (10) day period, then Assignee shall commence a cure within such ten (10) day period and shall diligently pursue such cure to completion not later than sixty (60) days following receipt of the Assignee Default Notice. The cure period specified herein shall not apply to any default of Assignee that is not susceptible of cure.

6. Remedies Upon Assignor's Default of Development Agreement Obligations. Any action or inaction of Assignor, or those under Assignor's control, which constitutes a default under the Development Agreement which impairs development of the Property or impairs the rights or obligations of Assignee under the Development Agreement, where such action or inaction is not cured within the relevant time periods set forth below, shall constitute a default under this Assignment (each, an "Assignor Default"). In the event of an Assignor Default, Assignee shall have the right, but not the obligation, to arrange for the cure of such Assignor Default in a commercially reasonable manner. Assignor shall cooperate with Assignee to effect the cure of such Assignor default. Within thirty (30) days of Assignor's receipt of an itemized request for reimbursement from Assignee for the costs of curing an Assignor Default, and documentation reasonably substantiating the same, Assignor shall reimburse Assignee for such costs. Assignor shall not be in default for any obligation to pay money unless the default continues uncured for a period of three (3) business days after receipt of notice from Assignee. Assignor shall not be in default of any other obligations unless the default continues for a period of ten (10) days after receipt of written notice (the "Assignor Default Notice") from Assignee; provided, however, that if such failure is of such a nature that it cannot be cured within such ten (10) day period, then Assignor shall commence a cure within such ten (10) day period and shall diligently pursue such cure to completion not later than sixty (60) days following receipt of the Assignor Default Notice. The cure period specified herein shall not apply to any default of Assignor that is not susceptible of cure.

7. Notice. All notices or other communications between Assignor and Assignee shall be given in the manner set forth in the Purchase Contract.

8. Miscellaneous. This Agreement: (i) shall be construed in accordance with the laws of the State of California; (ii) may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument; and (iii) shall bind and inure to the benefit of Assignor and Assignee and their successors and assigns. The headings and captions of the paragraphs of this Agreement are for convenience and reference only and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions hereof. If any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or any remaining provision of this Agreement. In the event that either party hereto brings an action at law or in equity to enforce or interpret or seek redress for breach of this Agreement, the prevailing party in

such action shall be entitled to recover from the other its litigation expenses and reasonable attorneys' fees in addition to all other appropriate relief. The parties hereby waive their respective right to trial by jury of any cause of action, claim, counterclaim or cross-complaint in any action, proceeding or hearing brought by a party hereto or its successors and assigns on any matter whatsoever arising out of, or in any way connected with, this Agreement, the relationship of the parties hereto, or the enforcement of any remedy under any law, statute, or regulation, emergency or otherwise, now or hereafter in effect. The parties hereto agree that the rule of contract construction that ambiguities are to be construed against the drafter shall not apply to this Agreement and that this Agreement shall be interpreted as though prepared by both parties.

[REMAINDER OF PAGE LEFT BLANK]
[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

ASSIGNEE:

a _____

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

ASSIGNOR:

STONEBRAE L.P.,
a Delaware limited partnership

By: YCS Nevada, Incorporated,
a Nevada corporation,
its General Partner

By _____
Name: Paul W. Yuen
Title: Authorized Representative

By _____
Name: Michael J. Letchinger
Title: Authorized Representative

The City hereby confirms that the Development Agreement remains in full force and effect, and consents to the partial assignment of the Development Agreement by Assignor to Assignee on the terms and conditions contained herein.

CITY OF HAYWARD,
a political subdivision of the State of California

Approved as to form:

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT A
DESCRIPTION OF PROPERTY

EXHIBIT B
LIST OF DEVELOPMENT AGREEMENT OBLIGATIONS
AND CONDITIONS OF APPROVAL RELATING TO THE PROPERTY

<u>Development Agreement Obligations</u>	<u>Conditions of Approval</u>
3.1	3(c)
3.2	3(p)
3.3	3(s)
3.4	4
3.7	43
3.9	52-53
4.1-4.3	56
4.7	64
6	66
7	73-75
8	78
9	85
10	87
12-14	92
	95-96
	99-102
	111
	133
	170-180
	185-200
	206-214
	216
	234-235
	237
	246

Addendum to Condition of Approval

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S T O N E B R A E

November 16, 2005

Mr. Jesus Armas
City Manager
City of Hayward
777 B Street
Hayward, CA 94541-4214

Re: StoneBrae Residential and Golf Community

Dear Jesus:

Stonebrae L.P. hereby formally requests the City of Hayward's consent to the release and partial termination of the Stonebrae Country Club project from the Hayward Boulevard Annex No. 2 Annexation Agreement and the Easthills Annex No. 1 (Revised) Annexation Agreement ("Annexation Agreements"). Enclosed is the form of Release and Partial Termination of Annexation Agreements ("Release") that we are asking the City to execute.

At the time of execution of the Blue Rock Country Club Project Development Agreement ("Development Agreement"), the City specifically addressed the fact that the fees required pursuant to the Development Agreement and project conditions superceded the fees required under the Annexation Agreements. The Easthills Annex No. 1 (Revised) Annexation Agreement ("Easthills Agreement") recognized that the City had developed a plan showing certain zoning policies for development in the Hayward hill area and that the property owners intended to submit applications, at such time as development of the property was proposed, consistent with the community plans and other planning documents that had been adopted by the City for development in the hillside area. Since execution of the Easthills Agreements, the City engaged in further planning for the Walpert Ridge area in the hillside area. Adoption by the City in 1995 of the Walpert Ridge Specific Plan (as amended in 1998 as part of the then Blue Rock approvals), coupled with the Development Agreement and other approvals for development of the Stonebrae project, effectively supercede the development expected and anticipated at the time of execution of the Easthills Agreements.

The Annexation Agreements appear on title for the Stonebrae Country Club project site. As we convey the lots to the builders, the title insurance company continues to take exception to the provisions of the Annexation Agreements, which predate the adoption of the Walpert Ridge Specific Plan and the Development Agreement. Hence, we are requesting that the City Council agree to execute the Release to avoid the necessity to continually require

Mr. Jesus Armas
November 16, 2005
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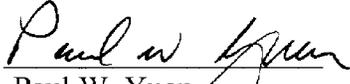
confirmation of the legal effect over and over again from the City as title is transferred to builders, and ultimately to individual homeowners.

We appreciate very much your and the Council's consideration of our request. I would be more than happy to answer any further questions you or any of the council members may have.

Very truly yours,

STONEBRAE L.P.,

By: YCS Nevada, Incorporated,

By: 
Paul W. Yuen
Chief Financial Officer

Enclosure
W02-SF:FLW\61476202.1

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Stonebrae, LP
170 Maiden Lane, Suite 800
San Francisco, CA, 94108
Attention: Paul W. Yuen

THIS SPACE ABOVE FOR RECORDER'S USE

RELEASE AND PARTIAL TERMINATION OF ANNEXATION AGREEMENTS
(Hayward Boulevard Annex No. 2 Annexation Agreement)
(Easthills Annex No. 1 (revised) Annexation Agreement)

THIS AGREEMENT IS RECORDED AT THE REQUEST OF THE CITY OF HAYWARD, A MUNICIPAL CORPORATION, AND IS EXEMPT FROM RECORDING FEES PURSUANT TO GOVERNMENT CODE § 6103 AND § 27383. [confirm that this is required]

THIS RELEASE AND PARTIAL TERMINATION OF ANNEXATION AGREEMENTS (the "Release and Partial Termination") is dated as of _____, 2005, and is entered into by and between the CITY OF HAYWARD, a municipal corporation (the "City"), and STONEBRAE L.P., a Delaware limited partnership ("Stonebrae").

RECITALS

- A. Stonebrae is the owner of that certain real property located in the City of Hayward, Alameda County, California, as described on Exhibit A hereto (the "Stonebrae Property").
- B. City and Y.C. Soda and Helen Soda, husband and wife (the "Sodas"), Stonebrae's predecessor-in-interest, have entered into the following agreements regarding the annexation of the Stonebrae Property to the City of Hayward: (i) that certain Easthills Annex No. 1 (Revised) Annexation Agreement, dated as of September 18, 1967, and recorded in the Official Records of Alameda County (the "Official Records") on October 6, 1967, at Reel 2051, Image 294 (the "Easthills Agreement"), and (ii) that certain Hayward Boulevard Annex No. 2 Annexation Agreement, dated as of September 22, 1982, and recorded in the Official Records on November 16, 1982, as Document No. 82-175023 (the "Hayward Boulevard Agreement", and together with the Easthills Agreement, collectively, the "Annexation Agreements").
- C. Hayward 1900, Inc., a California corporation ("Hayward 1900"), Stonebrae's predecessor-in-interest, and City entered into that certain Blue Rock Country Club Project Development Agreement dated as of April 8, 1998, and recorded in the Official Records on April 18, 1998, as Document No. 98128317 (as amended, the "Development Agreement").
- D. Among other things, the Development Agreement sets forth certain rights and obligations with respect to the development of the Stonebrae Property and supersedes in all material respects the provisions of the Annexation Agreements as they apply to the Stonebrae Property.

E. City and Stonebrae desire to eliminate any ambiguity with respect to the right to develop or the conditions to development of the Stonebrae Property by releasing the Stonebrae Property from the rights and obligations of the Annexation Agreements and terminating the Annexation Agreements to the extent that the Annexation Agreements affect any portion of the Stonebrae Property.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Stonebrae agree as follows:

1. Recitals. The Recitals set forth above are true and correct and are incorporated herein by this reference.
2. Release and Partial Termination. The Stonebrae Property is hereby released from the terms of the Annexation Agreements and the Annexation Agreements are hereby terminated to the extent the Annexation Agreements affect any portion of the Stonebrae Property.
3. Remaining Real Property. The remaining real property subject to the Annexation Agreements (all real property described therein other than the Stonebrae Property) is not released from the Annexation Agreements and shall remain encumbered by the Annexation Agreements as provided for therein.
4. Counterparts. This Release and Partial Termination may be executed in any number of counterparts, any set of which signed by all the parties hereto shall be deemed to constitute a complete, executed original for all purposes.

[REMAINDER OF PAGE LEFT BLANK]
[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, City and Stonebrae have executed this Release and Partial Termination as of the date first set forth above.

CITY:

CITY OF HAYWARD,
a municipal corporation

By: _____
Name: Jesus Armas
Title: City Manager

Attest: _____
Name: Angelina Reyes
Title: City Clerk

STONEBRAE:

STONEBRAE L.P.,
a Delaware limited partnership

By: YCS Nevada, Incorporated,
a Nevada corporation, dba
Stonebrae YCS, Inc., its General Partner

By: _____
Name: Paul W. Yuen
Title: Authorized Representative

By: _____
Name: Michael J. Letchinger
Title: Authorized Representative

EXHIBIT A
Property Description

DRAFT

HAYWARD CITY COUNCIL

RESOLUTION NO. _____

Introduced by Council Member _____

me
11/16/05

RESOLUTION APPROVING THE PARTIAL ASSIGNMENT AND ASSUMPTION AGREEMENTS FOR THE STONEBRAE COUNTRY CLUB PROJECT

BE IT RESOLVED that the City Council of the City of Hayward hereby consents to the Partial Assignment and Assumption Agreements for the Stonebrae Country Club project from Stonebrae, L.P., to Standard Pacific, Toll Brothers and Warmington Group of Companies, the proposed builders of Village A, in a form approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2005

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward

DRAFT

HAYWARD CITY COUNCIL

RESOLUTION NO. _____

Introduced by Council Member _____

me
11/16/05

**RESOLUTION APPROVING THE RELEASE AND PARTIAL
TERMINATION OF THE ANNEXATION AGREEMENTS
RELATIVE TO THE STONEBRAE COUNTRY CLUB
PROJECT**

BE IT RESOLVED that the City Council of the City of Hayward hereby authorizes the City Manager to negotiate and execute the Release and Partial Termination of the Annexation Agreements with respect to the Stonebrae Country Project, in a form approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2005

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward